

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR 08-34-BMM

Plaintiff,

vs.

Jonathan Andrew Martell,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. Martell of violating his conditions of supervised release by (1) failing to report for substance abuse testing on several occasions, and (2) failing to report for substance abuse treatment on several occasions. He admitted to the allegations. His supervised release should be revoked. He should be sentenced to three months in custody, with no supervised release to follow.

II. Status

United States District Judge Sam Haddon sentenced Mr. Martell to seventy-eight months in custody, with thirty-six months of supervised release to follow, on September 15, 2008, after a he pleaded guilty to Voluntary Manslaughter. (Doc.

34.) He began his first term of supervised release on December 13, 2014.

The United States Probation Office filed a Report on Offender Under Supervision on March 29, 2016, notifying the Court that Mr. Martell had consumed alcohol, used methamphetamine, and had not reported for substance abuse testing and treatment. (Doc. 38.) United States District Judge Brian Morris agreed to allow the Probation Office to continue working with Mr. Martell.

Judge Morris revoked Mr. Martell's supervised release on August 31, 2016, because he used methamphetamine and failed to report for substance abuse testing and treatment. (Doc. 48.) Judge Morris sentenced him to one month in custody, with six months of supervised release to follow. (*Id.*) Mr. Martell began his current term of custody on September 21, 2016.

Petition

The Probation Office filed a Petition for Warrant for Offender Under Supervision on March 9, 2017, alleging that Mr. Martell violated the terms of his supervised release by (1) failing to report for substance abuse testing on several occasions, and (2) failing to report for substance abuse treatment on several occasions. (Doc. 50.) United States District Judge Brian Morris issued a warrant for his arrest based on the allegations in the petition. (Doc. 51.)

Initial appearance

Mr. Martell appeared before the undersigned on March 28, 2017, in Great Falls, Montana. Federal Defender Hank Branom accompanied him. Assistant United States Attorney Jeffery Starnes represented the United States.

Mr. Martell said he had read the petition and understood the allegations. He waived the preliminary hearing, and the parties consented to proceed immediately with the revocation hearing before the undersigned.

Revocation hearing

Mr. Martell admitted to the allegations. The violations are serious and warrant revocation of his supervised release.

Mr. Martell's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months and could be ordered to remain on supervised release for thirty-five months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

Mr. Branom recommended a sentence at the low-end of the guideline range, with no supervised release to follow. Mr. Martell exercised his right of allocution and stated he and his wife recently adopted a special needs child that required constant care, which caused him to miss his appointments. Mr. Starnes agreed with

Mr. Branom's recommendation for a low-end sentence, with no supervised release to follow.

III. Analysis

Mr. Martell's supervised release should be revoked because he admitted violating its conditions. He should be sentenced to three months in custody, with no supervised release to follow. This sentence would be sufficient given the seriousness of the violations but not greater than necessary.

IV. Conclusion

Mr. Martell was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider his objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The undersigned **FINDS:**

Jonathan Andrew Martell violated the conditions of his supervised release by (1) failing to report for substance abuse testing on several occasions, and (2) failing to report for substance abuse treatment on several occasions.

The undersigned **RECOMMENDS:**

The district court should enter the attached Judgment, revoking Mr. Martell's supervised release and committing him to the custody of the United States Bureau of Prisons for three months, with no supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 3rd day of April, 2017.


John Johnston
United States Magistrate Judge